

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH VIGIL, on behalf of
himself and all others
similarly situated,

Plaintiff,

v.

DAK RESOURCES, INC., a Florida
corporation; and MICHAELS
STORES, INC., a Delaware
corporation,

Defendants.

No. 2:23-cv-00163-TLN-AC

**AMENDED PRETRIAL SCHEDULING
ORDER**

After reviewing the parties' Joint Status Report, the Court
hereby amends the Pretrial Scheduling Order.

I. SERVICE OF PROCESS

All named Defendants have been served and no further service
is permitted without leave of court, good cause having been
shown.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

No joinder of parties or amendments to pleadings is
permitted without leave of court, good cause having been shown.

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1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. §§ 1332(d), 1441,
3 1446 and 1453. Jurisdiction and venue are not contested.

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5 **PHASE I - CLASS CERTIFICATION**

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7 IV. DISCOVERY

8 The Court finds that bifurcation is necessary in order to
9 best determine if the elements of class certification are met.
10 Accordingly, the Court hereby bifurcates the discovery process.
11 All discovery in Phase I shall be limited to facts that are
12 relevant to whether this action should be certified as a class
13 action and shall be completed **within two hundred forty (240)**
14 **days**. In this context, "completed" means that all discovery
15 shall have been conducted so that all depositions have been taken
16 and any disputes relative to discovery shall have been resolved
17 by appropriate order if necessary and, where discovery has been
18 ordered, the order has been obeyed. All motions to compel
19 discovery must be noticed on the magistrate judge's calendar in
20 accordance with the local rules of this Court.

21 V. DISCLOSURE OF EXPERT WITNESSES

22 All counsel are to designate in writing, file with the
23 Court, and serve upon all other parties the name, address, and
24 area of expertise of each expert that they propose to tender for
25 class certification purposes not later than **sixty (60) days after**
26 **the close of discovery**.¹ The designation shall be accompanied by

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¹ The discovery of experts will include whether any motions based on
28 Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and/or
 Kumho Tire Co. v. Carmichael, 119 S. Ct. 1167 (1999) are anticipated.

1 a written report prepared and signed by the witness. The report
2 shall comply with Fed. R. Civ. P. 26(a)(2)(B).

3 **Within thirty (30)** days after the designation of expert
4 witnesses, any party may designate a supplemental list of expert
5 witnesses who will express an opinion on a subject covered by an
6 expert designated by an adverse party. The right to designate a
7 supplemental expert for rebuttal purposes only shall apply to a
8 party who has not previously disclosed an expert witness on the
9 date set for expert witness disclosure by this Pretrial
10 Scheduling Order.

11 For purposes of this Pretrial Scheduling Order, an "expert"
12 is any person who may be used for purposes of class certification
13 or opposing class certification to present evidence under Rules
14 702, 703, and 705 of the Federal Rules of Evidence, which include
15 both "percipient experts" (persons who, because of their
16 expertise, have rendered expert opinions in the normal course of
17 their work duties or observations pertinent to the issues in the
18 case) and "retained experts" (persons specifically designated by
19 a party to be a testifying expert for the purposes of
20 litigation).

21 Each party shall identify whether a disclosed expert is
22 percipient, retained, or both. It will be assumed that a party
23 designating a retained expert has acquired the express permission
24 of the witness to be so listed. Parties designating percipient
25 experts must state in the designation who is responsible for
26 arranging the deposition of such persons.

27 All experts designated are to be fully prepared at the time
28 of designation to render an informed opinion, and give their

1 bases for their opinion, so that they will be able to give full
2 and complete testimony at any deposition taken by the opposing
3 party.

4 VI. CLASS CERTIFICATION

5 The Motion for Class Certification shall be **filed no later**
6 **than one hundred eighty (180) days after the close of**
7 **certification discovery.** The parties are responsible for
8 ensuring that all motions are filed to allow for proper notice of
9 the hearing under the Federal Rules of Civil Procedure and/or
10 Local Rules. Local Rule 230 governs the calendaring and
11 procedures of civil motions.

12 Failure to comply with Local Rule 230(c), may be deemed
13 consent to the motion and the Court may dispose of the motion
14 summarily.

15 **If the parties wish to modify the motion briefing schedule,**
16 **they may file a proposed stipulation and order for the Court's**
17 **consideration.**

18 VII. POST-CERTIFICATION CASE ACTIVITY

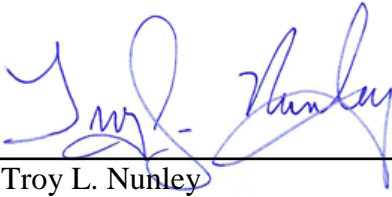
19 All other necessary dates and deadlines, including dates for
20 the Final Pretrial Conference and Trial, along with all deadlines
21 associated therewith, will be set by a Supplemental Pretrial
22 Scheduling Order to be issued following the Court's ruling on
23 Plaintiff's Class Certification Motion.

24 VIII. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

25 This Pretrial Scheduling Order will become final without
26 further order of the Court unless objections are filed within
27 *fourteen* (14) days of service of this Order.

28 IT IS SO ORDERED.

1 DATED: September 12, 2023

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5 Troy L. Nunley
6 United States District Judge
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